

ORIGINAL

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

JOHN D. PERKEY and THERESA M.  
PERKEY,

Plaintiffs

vs.

RELIABLE CARRIERS, INC.,  
DANIEL JOSEPH BEMBEN and KENT,  
Defendants

CIVIL ACTION NO. 1:CV-00-1639

JURY TRIAL DEMANDED

✓ Magistrate Judge Smyser

FILED  
HARRISBURG, PA

JUL 03 2003

MARV F. D'AMOREA, CLERK  
Deputy Clerk

JOINT SETTLEMENT MOTION OF DEFENDANTS RELIABLE CARRIERS, INC.  
AND DANIEL JOSEPH BEMBEN AS WELL AS PLAINTIFFS JOHN D. PERKEY AND  
THERESA M. PERKEY

AND NOW come Defendants Reliable Carriers, Inc. and Daniel Joseph Bemben, by and through their attorneys, Godfrey & Courtney, P.C., and Plaintiffs John D. Perkey and Theresa M. Perkey, by and through their attorneys, Irwin, McKnight & Hughes, and state the following:

1. Plaintiffs began this action by filing a Complaint on September 14, 2000, seeking recovery for injuries allegedly sustained because of an accident, which occurred on September 15, 1998, on I-76 (Pennsylvania Turnpike) near milepost 37.7.

2. Reliable Carriers, Inc. ("Reliable") and Daniel Joseph Bemben ("Bemben") were insured at the time of the accident by Reliance Insurance Company ("Reliance").

3. While Plaintiffs' suit against Reliable and Bemben was pending, Reliance became insolvent, and The Michigan Property and Casualty Guaranty Association ("MPCGA") assumed responsibility.

4. On May 30, 2003, this Honorable Court issued an Order denying ABF Freight System's Motion to Intervene. In that Order, this Honorable Court set forth its position that ABF Freight System's could not assert its subrogation lien. This decision was based upon Section

991.1817, Non-duplication of Recovery, of the Pennsylvania Insurance and Casualty Guaranty Act.

5. On June 26, 2003, Plaintiffs settled their pain and suffering claims for the sum of Fifty Five Thousand and 00/100 (\$55,000.00) Dollars. See correspondence dated 6/26/03 attached hereto as Exhibit "A."

6. On June 27, 2003, ABF Freight Systems, Inc. filed an appeal to the United States Court of Appeals for the Third Circuit. See Appeal attached hereto as Exhibit "B."

7. ABF Freight Systems, Inc. has verbally requested that the settlement funds be placed in escrow until this matter is resolved.

8. In the proposed Release, the parties have preserved ABF Freight System's right to assert its subrogation claim should the United States Court of Appeals For the Third Circuit reverse the decision of this Honorable Court. In addition, Defendants have preserved their right to present all defense available to them in order to defend against this lien. A copy of the proposed Release is attached hereto as Exhibit "C."


9. Plaintiffs and Defendants seek the following from this Honorable Court:

- A. Approval of the settlement and Release;
- B. An Order directing Defendants to pay the Fifty Five Thousand Dollars (\$55,000.00) Dollars immediately to the Plaintiffs;
- C. An Order incorporating its May 30, 2003 opinion that ABF Freight System, Inc. is precluded from asserting its subrogation lien; and

WHEREFORE, Defendants Reliable Carriers, Inc. and Daniel Joseph Bemben and Plaintiffs John D. Perkey and Theresa M. Perkey respectfully request that this Honorable Court approve this settlement.

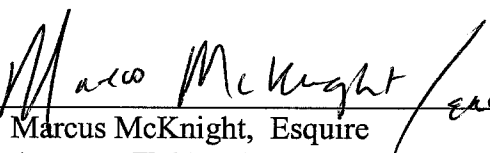
Respectfully submitted,

GODFREY & COURTNEY, P.C.

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Date: July 3, 2003

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Date: July \_\_\_\_, 2003